

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION

All Pro Truck and Trailer Repair, LLC )  
Plaintiff, )  
v. )  
Western National Mutual Insurance )  
Company, )  
Defendant. )  
CIVIL ACTION NO. 1:16-cv-34

## **NOTICE OF REMOVAL**

In accordance with 28 U.S.C. §§ 1441 and 1446, Defendant Western National Mutual Insurance Company (“WNI”) files this Notice of Removal of Plaintiff’s civil action from the North Central Judicial District Court of Ward County, North Dakota to this Court based upon diversity of citizenship under 28 U.S.C. § 1332(a) as demonstrated below. In support of this Notice of Removal, Defendant WNI, by and through its attorneys, avers as follows:

1. The above-captioned action was commenced by Plaintiff on or about January 26, 2016. A true and correct copy of the Summons and Complaint dated January 25, 2016 are attached hereto as Exhibit "A". Service of the Complaint was made on Defendant on or after January 26, 2016.

2. This action arises from an alleged theft of business personal property at Plaintiff's shop located in Minot, North Dakota on or about April 8, 2015. Plaintiff made a claim under a policy of insurance issued to it by Defendant WNI for business personal property and loss of income. After conducting a reasonable investigation of the claim, Defendant WNI denied the claim. Plaintiff commenced this action seeking declaratory judgment and asserting claims for

breach of insurance contract, breach of implied covenant of good faith and fair dealing, and bad faith under N.D.C.C. § 26.1-04-03.

3. In connection with its insurance claim, Plaintiff filed a Sworn Statement in Proof of Loss indicating that the total amount Plaintiff claimed under the policy was \$204,976.97. The Sworn Statement in Proof of Loss is attached as Exhibit B to Plaintiff's Complaint.

4. Defendant Western National Mutual Insurance Company is a foreign corporation duly organized under the laws of the State of Minnesota with its principal place of business located at 5350 West 78<sup>th</sup> Street in Edina, Minnesota.

5. Plaintiff All Pro Truck and Trailer Repair, LLC, is domestic corporation duly organized under the laws of the State of North Dakota, with its principal place of business located at 750 Highway 2 East, Suite 111 and 112, Minot, North Dakota.

6. This action is removable on the grounds of diversity of citizenship. Complete diversity exists and is apparent from the allegations in paragraphs 2 and 3 of the Complaint, and paragraphs 4 and 5 of this Notice of Removal.

7. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332. As a civil action brought in a State court of which this Court has original jurisdiction, this action may be removed to this Court pursuant to 28 U.S.C. §1441(a).

8. This Notice of Removal is being filed within thirty (30) days of Defendant WNI's receipt of the Complaint as required by 28 U.S.C. § 1446(b).

9. No pleadings, process or orders other than the Summons and Complaint, with Exhibits A-C, have been served on Defendant WNI, and therefore no other pleadings, process, or orders are attached to this Notice as required by 28 U.S.C. § 1446(a).

10. All fees required by law in connection with this notice have been filed by Defendant WNI. If any questions arise as to the propriety of the removal of this action, Defendant WNI requests the opportunity to present a brief and oral argument in support of their position that this cause is removable.

WHEREFORE, Defendant Western National Mutual Insurance Company removes the above-captioned action to the United States District Court for the District of North Dakota, from the North Central Judicial District Court of Ward County.

Dated: February 23, 2016

PFEFFERLE KANE, LLP

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